

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
 )  
1998 Biennial Regulatory Review – )  
Streamlining of Mass Media Applications, ) MM Docket No. 98-43  
Rules, and Processes )  
 )  
To: The Commission )

**PETITION FOR RECONSIDERATION**

The Association of America's Public Television Stations ("APTS") respectfully requests the Commission to reconsider, in certain limited respects, its decision in this proceeding to eliminate any construction permit extension procedure and to cancel automatically all construction permits for broadcast facilities not completed by the end of their construction periods.<sup>1</sup> Although APTS supports the Commission's goals of reducing paperwork and administrative burdens while promoting the expeditious construction of broadcast stations, we believe that the Commission should adapt the rules modifying the construction permit extension procedures to reflect adequate consideration of the unique challenges facing public television permittees, especially those planning to construct digital television ("DTV") facilities. Toward this end, the Commission should modify the rules to permit public television permittees to extend their construction periods when they

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<sup>1</sup> Report and Order, In re 1998 Biennial Regulatory Review – Streamlining of Mass Media Applications, Rules, and Processes, MM Docket No. 98-43, FCC 98-281, ¶¶ 83-90 (released Nov. 25, 1998) ("*Report and Order*").

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face obstacles that are (1) unique to public television stations, (2) related to the permittees' efforts to prepare for or to construct DTV facilities, and (3) due to factors beyond their control.

The Commission should reconsider its decision because the new rules could undermine public broadcasters' efforts to bring the combined benefits of traditional public television services and cutting-edge DTV technologies to new audiences. In particular, the new rules pose a unique threat to new NTSC permittees that were not granted DTV allotments but would like to construct their initial facilities in digital. According to the *Report and Order*, a permittee in that position would have its initial construction period increased from two to three years.<sup>2</sup> It would then be required to complete construction of a station, either analog or digital, by the end of the three-year period – which could be as early as April 4, 2000 – unless construction were delayed by administrative or judicial review of the construction permit or an “act of God.”<sup>3</sup> If construction were not completed in time, the construction permit would be automatically forfeited.<sup>4</sup>

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<sup>2</sup> *Report and Order*, ¶ 80.

<sup>3</sup> *Id.* ¶¶ 84-85; see also Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order, *In re Advanced Television Systems and Their Impact upon the Existing Television Broadcast System*, MM Docket No. 87-268, 13 FCC Rcd 6860, 6866 (1998) (“*DTV MO&O on Reconsideration of Fifth R&O*”) (“[W]e will require [new NTSC permittees whose applications were not granted on or before April 3, 1997] to build a station, analog or digital, within the initial two-year construction period granted, rather than applying the DTV construction timetable adopted in the *Fifth Report and Order*.”).

<sup>4</sup> *Report and Order*, ¶ 89.

Although we agree that many permittees should be able to complete construction in accordance with this schedule, we cannot agree that this three-year construction period "would provide *all* permittees an adequate and realistic time to construct."<sup>5</sup> The fact is that a noncommercial NTSC permittee is likely to face significant obstacles if it attempts to construct a digital facility before its construction permit expires sometime during the next few years. Public television stations have limited funding sources and must obtain a significant portion of their funding, particularly for major capital expenditures, from federal and state government grants that often require a lead time of more than a year. At present, the availability of such funding for DTV facilities is even more limited than for public television construction generally, in part because most public stations are not required to have digital facilities constructed until 2003.<sup>6</sup> Thus, it is highly likely that a public television permittee will be hard pressed, despite its best efforts, to obtain the funding to even *begin* constructing a DTV station by the expiration of its construction permit, which could be as early as April 2000.

Admittedly, a permittee in this position would have the option of constructing a NTSC station within its initial construction period and converting to DTV later.<sup>7</sup> However, by essentially *forcing* public stations to take that route by

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<sup>5</sup> *Id.* ¶ 83 (emphasis added).

<sup>6</sup> See, e.g., "PTV Stations Gearing Up for DTV Funding Battle in States," *Communications Daily*, Jan. 4, 1999 (describing public stations' hopes that appropriations for DTV funding will at least be included as "negotiable line item" in state governors' budgets that are just being presented this year).

<sup>7</sup> *DTV MO&O on Reconsideration of Fifth R&O*, 13 FCC Rcd at 6865.

holding them to inflexible construction deadlines, the Commission imposes additional costs on licensees with limited funds *and* acts inconsistently with its own goal of promoting the rapid transition to DTV. A new noncommercial NTSC permittee that first constructed an analog station would likely face significant hurdles to a speedy buildout of digital facilities. Under the Commission's decision in the *DTV Proceeding*, a permittee that lacks a paired DTV allotment and builds its initial facility in analog has until the 2006 analog shut-off deadline (or perhaps later if DTV penetration lags), rather than the DTV build-out date for existing licensees, to convert to DTV.<sup>8</sup> And a new public television station in that position likely would be forced to wait until near the end of the transition to convert to DTV because it already would have expended much of its scarce resources constructing its initial NTSC facility. In addition, such a station would have difficulty obtaining additional funding for its conversion to DTV because it would be competing for such funds with public stations that have separate DTV allotments and are *required* to have DTV stations on the air by 2003.<sup>9</sup> The long-term analog-only public television stations created as a result could both slow the DTV transition and inhibit

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<sup>8</sup> *Id.* at 6866.

<sup>9</sup> Surely a federal or state government agency responsible for allocating DTV construction grants to public stations would award funds first to those existing licensees required to build DTV stations by 2003 and fund new licensees that have until 2006 last. And legislatures already feeling pressed for DTV funding for public stations would probably feel justified in waiting a few years after funding the 2003 "spurt" of construction of public DTV stations before funding the new public analog stations not required to convert until the end of the transition.

the widespread provision of the valuable educational services being developed by public television stations anticipating the transition to DTV.<sup>10</sup>

To alleviate this threat and ensure that the Commission's streamlined rules both promote the goals of this proceeding *and* do not undermine the Commission's equally-important goal of promoting the swift transition to digital television, APTS urges the Commission to modify the new rules to permit a noncommercial NTSC permittee not granted a DTV allotment (but planning to construct an initial digital facility) to request an extension of its construction period when it files an application to modify its construction permit to authorize construction of a DTV facility. The extension request should be granted if the permittee can demonstrate that it is unlikely to be able to complete construction of the digital facility within the initial construction period because it faces obstacles unique to public television stations and beyond its control. Such a rule would not impose a significant administrative burden on the Commission because the class of permittees eligible to seek such an extension would be small and Commission staff could review the extension request at the time it is reviewing the application to modify the construction permit. Nor would the rule result in significant

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<sup>10</sup> See Comments of Association of America's Public Television Stations, et al., CS Docket No. 98-120 (Oct. 13, 1998); Reply Comments of Association of America's Public Television Stations, et al., CS Docket No. 98-120 (Dec. 22, 1998).

“warehousing” of spectrum, since a permittee seeking an extension would have to demonstrate a genuine commitment to proceeding with construction.<sup>11</sup>

In addition to granting special relief to this limited class of public television stations, the Commission should carefully consider the effect that its proposed rules will have on public broadcasters generally as they face the challenge of continuing to provide free, high-quality, educational programming to the public while developing complex business plans to transition to the digital age. Public television permittees that plan to build analog facilities first and then convert to digital (or that are already licensed and are modifying or expanding existing facilities under analog permits) may already be taking steps to facilitate the ultimate conversion to DTV – such as building towers that will support DTV transmission equipment – and those permittees too may face unique obstacles that would justify the grant of a reasonable construction permit extension. To avoid the stranded investment and unserved public that would be left by automatic cancellation of the construction permits of public television stations in that position, the Commission should clarify that a public television permittee that has taken substantial steps toward construction of facilities and that has been prevented from completing construction by obstacles unique to public television stations, beyond the control of the permittee, and related to preparation for or construction of a DTV facility may

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<sup>11</sup> The Commission could also limit the scope of the extensions granted, such as by requiring new DTV stations to be constructed by the 2003 deadline by which public stations generally will be required to have DTV stations on the air.

obtain an extension of its construction permit.<sup>12</sup> Such a procedure likewise would not significantly burden the Commission or undermine the goal of promoting the expeditious construction of broadcast stations because the class of permittees eligible would be limited and the circumstances in which an extension would be justified would be relatively narrow and well-defined.

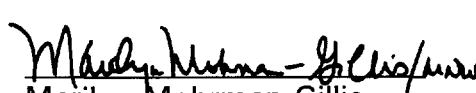
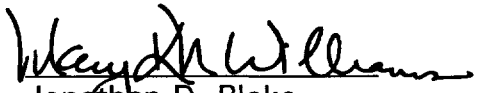
In accordance with the foregoing, the Commission should reconsider its decision in the *Report and Order* and revise the rules modifying the construction permit extension procedures to allow public television permittees to obtain extensions of their construction periods under the narrow circumstances outlined above. It is important that the Commission resolve this issue soon so that the rules will be clear to permittees facing impending construction deadlines and important planning decisions, including whether to proceed with construction of analog or digital facilities.

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<sup>12</sup> Extending construction permits in these circumstances rather than allowing them to be forfeited automatically would be more consistent with the Commission's obligations under Section 319(b) of the Communications Act, which provides that a construction permit is subject to automatic forfeiture if construction is not completed by the deadline, "unless [completion is] prevented by causes not under the control of the grantee." 47 U.S.C. § 319(b).

Respectfully submitted,

**THE ASSOCIATION OF AMERICA'S PUBLIC  
TELEVISION STATIONS**

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